

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Arkansas

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Process for the Investigation of Allegations of Resident Neglect  
and Abuse and Misappropriation of Resident Property

The State has in effect the following process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide or a resident in a nursing facility or by another individual used by the facility in providing services to such a resident.

STATE LICENSING REGULATIONS REGARDING THE PROCESS FOR THE RECEIPT OF ALLEGATIONS OF NEGLECT AND ABUSE AND MISAPPROPRIATION OF RESIDENT PROPERTY ARE SPECIFIED ON PAGES 1 THROUGH 13 BELOW.

LTC.300

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306 REPORTING SUSPECTED ABUSE/NEGLECT, INCIDENTS, ACCIDENTS,  
DEATHS FROM VIOLENCE AND UNUSUAL OCCURRENCES

The facility shall develop and implement written policies and procedures to ensure that incidents, including suspected abuse/neglect of residents, accidents, deaths from violence and unusual occurrences are reported and documented as required by all applicable state and federal laws and these regulations.

Facility policies and procedures regarding occurrences addressed in these regulations will be included in orientation training for all new employees and will be addressed at least annually in in-service training for all facility staff.

306.1 INCIDENTS/OCCURRENCES REPORTABLE WITHIN ONE HOUR

The Office of Long Term Care shall be notified by telephone (refer to Section 306.5 for content of telephoned report) within one hour of occurrence of the following incidents ;

- Any accident or unusual occurrence that results in the death of a resident.
- Any fire or explosion within a Long Term Care Facility.
- Any disaster in a Long Term Care Facility, i.e., tornado, flood, nuclear disaster, toxic waste spill, etc.
- Violent acts within a Long Term Care Facility such as shooting, rape, robbery, or assault.
- Major power outages or losses of heat/air conditioning lasting

TN No. <u>92-25</u>	STATE <u>Arkansas</u>	Effective Date <u>OCT 01 1990</u>
Supersedes	DATE REC'D <u>JUN 28 1992</u>	A
TN No. <u>None</u>	DATE APP'D <u>JUL 28 1992</u>	
<u>New Page</u>	DATE EFF <u>OCT 01 1990</u>	
	HCFA 179 <u>92-25</u>	
		HCFA ID: _____

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State/Territory: Arkansas

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and Abuse and Misappropriation of Resident Property

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for more than two hours.

- Any suspected occurrences of abuse and/or neglect to residents, whether or not occurring on facility premises. Refer to Section 306.4 and to Arkansas child and adult abuse and neglect reporting statutes.

- Absence/elopement of a resident from the facility as defined below.

Absence/elopement shall mean circumstances where the resident cannot be located or has left the premises without authorization. If the resident cannot be located within one hour, he or she shall be considered absent. For the purpose of this section, a resident is authorized to leave the premises in any manner consistent with the resident's plan of care, or pursuant to specific authorization by a physician, the facility administrator, or the administrator's designee. Any legally competent resident may execute discharge documents. If there is reason to believe such a resident, upon discharge, may be an endangered adult (see Section 306.4.6) the facility remains obligated to make reports required by law (see Section 306.4).

**306.2 INCIDENTS/OCCURRENCES REPORTABLE WITHIN TWO HOURS**

The following incidents shall be reported by telephone (refer to Section 306.5 for content of telephoned report) to the Office of Long Term Care within two (2) hours of the incident if the incident occurs during normal business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays), or before 10:00 a.m. on the next workday if the incident occurs after normal business hours:

- Accidents, incidents, or unusual occurrences involving injury or illness to a resident that require medical treatment or services outside the facility.

- All cases of reportable disease.

- Loss of heat/air conditioning or fire alarm systems of less than a two (2) hour duration.

1. *92-25*  
Supersedes  
TN No. *Time*  
*New Page*

Approval Date	<i>Arkansas</i>
DATE REC'D	<i>JUN 29 1992</i>
DATE APPV'D	<i>JUL 28 1992</i>
DATE EFF	<i>OCT 01 1990</i>

Effective Date **OCT 01 1990**  
HCFA ID: \_\_\_\_\_

A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Arkansas

ELIGIBILITY CONDITIONS AND REQUIREMENTS

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and Abuse and Misappropriation of Resident Property

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- Theft or misappropriation of resident funds or property.

306.3 AFTER HOURS REPORTING

After business hours, weekends and holidays, incidents specified in Section 306.1 shall be reported by calling the emergency number provided by the Office of Long Term Care for this purpose.

306.4 REPORTING SUSPECTED ABUSE/NEGLECT

The facility's written policies and procedures shall include, at a minimum, requirements specified in this section.

306.4.1 The requirement that the Administrator or his designated agent immediately report all cases of suspected abuse/neglect of residents of a long term care facility as specified below:

a. Suspected abuse/neglect of an adult (18 years old or older) shall be reported to the sheriff of the county in which the facility is located, as required by Arkansas Code Annotated 5-28-203 (b).

b. Suspected abuse/neglect of a child (under 18 years of age) shall be reported to the local law enforcement agency or to the central intake unit of the Department of Human Services, as required by Act 1208 of 1991. Central intake may be notified by telephone at 1-800-482-5964.

306.4.2 The requirement that the Administrator or his designated agent report suspected abuse/neglect to the Office of Long Term Care as specified in Section 306.1 above.

306.4.3 The requirement that facility personnel, including but not limited to, licensed nurses, nursing assistants, physicians, social workers, mental health professionals and other employees in the facility who have reasonable cause to suspect that a resident has been subjected to conditions or circumstances which have or could have resulted in abuse/neglect are required to immediately notify the Administrator or his designated agent.

Supersedes  
TN No

5. 92-25  
Time-  
New Page

STATE	Arkansas
Approval Date	JUN 29 1992
DATE REC'D	JUL 28 1992
DATE APPV'D	JUL 28 1992
DATE EFF	OCT 01 1990
HCFA 179	92-25

Effective Date OCT 01 1990  
HCFA ID: \_\_\_\_\_

A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Arkansas

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and Abuse and Misappropriation of Resident Property

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306.4.4 The requirement that, upon hiring, each facility employee be given a copy of the abuse/neglect reporting policies and procedures and sign a statement that the policies and procedures have been received and read. The statement shall be filed in the employee's personnel file.

306.4.5 The requirement that all facility personnel receive annual in-service training in identifying and reporting suspected abuse/neglect.

306.4.6 Definitions (from Arkansas Code Annotated 5-28-101) for reporting suspected abuse of adult residents of long term care facilities as follows:

(1) "Endangered adult" means:

(A) An adult eighteen (18) years of age or older who is found to be in a situation or condition which poses an imminent risk of death or serious bodily harm to that person and who demonstrates the lack of capacity to comprehend the nature and consequences of remaining in that situation or condition; or

(B) A resident eighteen (18) years of age or older of a long-term care facility which is required to be licensed under [Arkansas Code Annotated] 20-10-224 who is found to be in a situation or condition which poses an imminent risk of death or serious bodily harm to such person and who demonstrates the lack of capacity to comprehend the nature and consequences of remaining in that situation or condition.

(2) "Abuse" and "maltreatment" means any willful or negligent act which results in negligence, malnutrition, physical assault or battery, physical or psychological injury inflicted by other than accidental means, and failure to provide necessary treatment, rehabilitation, care, sustenance, clothing, shelter, supervision, or medical services;

(3) "Exploitation" means any unjust or improper use of another person for one's own profit or advantage.

(4) "Imminent danger to health or safety" means a situation in

1. o. 92-25  
Supersedes  
TN No. *New Page*

STATE <i>Arkansas</i>
Approval Date <i>JUN 29 1992</i>
DATE REC'D <i>JUN 29 1992</i>
DATE APPV'D <i>JUL 28 1992</i>
DATE EFF <i>OCT 01 1990</i>
HCFA 179

Effective Date <i>OCT 01 1990</i>
HCFA ID: _____
A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Arkansas

ELIGIBILITY CONDITIONS AND REQUIREMENTS

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which death or severe bodily injury could reasonably be expected to occur without intervention. The burden of proof shall be upon the department to show by clear and convincing evidence that such imminent danger exists.

306.4.7 Definitions (from Act 1208 of 1991) for reporting suspected abuse/neglect of children as follows:

(1) "Child" or "juvenile" means an individual who:

(A) Is under the age of eighteen (18) years, whether married or single;

(B) Is under the age of twenty-one (21) years, whether married or single, who was adjudicated delinquent under the Arkansas Juvenile Code for an act committed prior to the age of eighteen (18) years and for whom the court retains jurisdiction; or

(C) Was adjudicated dependent-neglected under the Arkansas Juvenile Code before reaching the age of eighteen (18) years and who, while engaged in a course of instruction or treatments, requests the court to retain jurisdiction until the course has been completed.

(2) "Parent" means a biological mother, an adoptive parent, a man to whom the biological mother was married at the time of conception or birth, or who has been found, by a court of competent jurisdiction, to be the biological father of the juvenile.

(3) "Child maltreatment" means abuse, sexual abuse, neglect, sexual exploitation, or abandonment;

(4) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible for the juvenile's welfare:

TN No. *92-25*  
Supersedes  
TN No. *Time New Page*

STATE <i>Arkansas</i>	Approval <i>JUN 29 1992</i>
DATE REC'D	<i>JUL 28 1992</i>
DATE APP'D	<i>OCT 01 1990</i>
DATE EFF	<i>92-25</i>
HCFA 179	

Effective Date *OCT 01 1990*

A

HCFA ID: \_\_\_\_\_

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Arkansas

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Process for the Investigation of Allegations of Resident Neglect  
and Abuse and Misappropriation of Resident Property

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(A) Extreme and repeated cruelty to juvenile; or

(B) Physical, psychological, or sexual abuse of any juvenile which includes, but is not limited to, intentionally, knowingly, or negligently and without justifiable cause:

(i) Engaging in conduct creating a substantial possibility of death, permanent or temporary disfigurement, illness, impairment of any bodily organ, or an observable and substantial impairment in the intellectual or psychological capacity of the juvenile to function within his normal range of performance and behavior with due regard to his culture except when the juvenile is being furnished with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized religious denomination by a duly accredited practitioner thereof in lieu of medical treatment;

(ii) Any nonaccidental physical injury or mental injury; or

(iii) Any injury which is at variance with the history given.

(5) "Sexual abuse" includes solicitation or participation in sexual activity with a juvenile by an adult or person responsible for the care and maintenance of the juvenile. Sexual abuse also includes any offense relating to sexual activity, abuse, or exploitation, including rape and incest, as set out and defined in the Arkansas Criminal Code and amendment thereto, [Section] 5-1-101 et seq.

(6) "Neglect" means those acts or omissions, of a parent, guardian, custodian, foster parent, or any person who is entrusted with the juvenile's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child care facility, public or private school, or any person legally responsible under state law for the juvenile's welfare which constitute:

(A) Failure or refusal to prevent the abuse of the juvenile when such person knows or has reasonable cause to know the juvenile is or has been abused;

STATE <u>Arkansas</u>	
DATE REC'D <u>JUN 29 1992</u>	
DATE APPV'D <u>JUL 28 1992</u>	A
DATE EFF <u>OCT 01 1990</u>	
HCFA 179 <u>9223</u>	

Effective Date OCT 01 1990

HCFA ID: \_\_\_\_\_

TN No. 9223  
Supersedes  
TN No. Time  
New Page



STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Arkansas

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Process for the Investigation of Allegations of Resident Neglect  
and Abuse and Misappropriation of Resident Property

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(B) Failure or refusal to provide the necessary food, clothing, shelter, and education required by law, or medical treatment necessary for the juvenile's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered or rejected, or when the juvenile is being furnished with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized religious denomination by a duly accredited practitioner thereof in lieu of medical treatment;

(C) Failure to take reasonable action to protect the juvenile from abandonment, abuse, sexual abuse, sexual exploitation, neglect, or parental unfitness where the existence of such condition was know or should have been known;

(D) Failure or irremedial inability to provide for the essential and necessary physical, mental, or emotional needs of the juvenile;

(E) Failure to provide for the juvenile's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care; or

(F) Failure, although able, to assume responsibility for the care and custody of the juvenile or participate in a plan to assume such responsibility.

(7) "Sexual exploitation" means allowing, permitting, or encouraging participation or depiction of the juvenile in prostitution, obscene photographing, filming, or obscenely depicting a juvenile for any use or purpose.

(8) "Abandonment" means the failure of the parent to provide reasonable support and to maintain regular contact with the juvenile through statement or contact, when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future, and failure to support or maintain regular contact with the juvenile without just cause for a period of one (1) year shall constitute a rebuttable presumption of abandonment

TN No. 92-25  
Supersedes  
TN No. None  
New Page

STATE <u>Arkansas</u>	A
DATE REC'D <u>JUN 29 1992</u>	
DATE APPV'D <u>JUL 28 1992</u>	
DATE EFF <u>OCT 01 1990</u>	

Effective Date OCT 01 1990

HCFA ID: \_\_\_\_\_

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Arkansas

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Process for the Investigation of Allegations of Resident Neglect  
and Abuse and Misappropriation of Resident Property

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(9) "Caretaker" means a parent, guardian, custodian, foster parent, or any person ten (10) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, child-care facility, public or private school, or any person legally responsible for a child's welfare;

(10) "Severe Maltreatment" means sexual abuse, sexual exploitation, acts or omissions which may or do result in death, abuse involving the use of a deadly weapon as defined by the Arkansas Criminal Code, bone fracture, internal injuries, burns, immersions, suffocation, abandonment, medical diagnosis of failure to thrive, or causing a substantial and observable change in the behavior or demeanor of the child except that a child shall not be considered to be severely maltreated when the child is being furnished with treatment by a spiritual means alone, through prayer, in accordance with the tenants and practices of a recognized religious denomination by a duly accredited practitioner thereof in lieu of medical treatment;

306.5 CONTENT OF TELEPHONED INCIDENT AND ACCIDENT REPORTS

The telephoned incident/accident report will include the following information:

- Full name, age, race and sex of any involved residents.
- Full name, age, race and sex of any involved facility personnel.
- Full name, age, race and sex of any alleged perpetrator.
- Time and location of incident.
- Time and date of the report. The identity of the person the report is given to.
- Name, address and telephone number of the facility Administrator, or, in his/her absence, designee in charge of

TN NO. *9225*  
Supersedes  
TN No. *None*  
*New Page*

STATE	<i>[Signature]</i>
DATE REC'D	<i>JUN 29 1992</i>
DATE APP'VD	<i>JUL 28 1992</i>
DATE EFF	<i>OCT 01 1990</i>
HCFA 179	<i>9225</i>

A

Effective Date *OCT 01 1990*

HCFA ID: \_\_\_\_\_



STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Arkansas

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handling the situation.

- Description/summary of the incident.
- Status of the situation at the time the report is made.

**306.6 WRITTEN INCIDENT AND ACCIDENT REPORTS**

Written reports of all incidents and accidents shall be completed as soon as possible after occurrence. The written incident and accident reports shall be comprised of all information specified in Section 306.5 regarding the content of telephoned incident reports and in Section 306.7 regarding resident follow-up.

All written reports will be promptly reviewed, initialed and dated by the facility Administrator or designee. All reports involving accident/injury to residents will also be reviewed, initialed and dated by the Director of Nursing Services or other facility R.N.

A copy of the written report on all incidents specified in Section 306.1 (Incidents/Occurrences Reportable Within One Hour), including available initial examination and shift notes on involved residents, will be sent to the Office of Long Term Care immediately following the Administrator's/designee's review. Incidents specified in Section 306.2 (Incidents/Occurrences Reportable Within Two Hours) will be submitted if requested by the Office of Long Term Care.

The Administrator/designee will review and track all incident and accident reports and prepare a summary for review by the facility's Quality Assessment and Assurance Committee (refer to Section 306.9) during its quarterly meetings. The purpose of this quarterly review is to identify health and safety hazards.

The written report may be amended and re-submitted at any time circumstances require. In any event, written follow-up reports must be submitted to the Office of Long Term Care in instances whereby the case/incident is not closed; when a significant change in the situation, plan, or outcome occurs; or when necessary or directed by the Office of Long Term Care.

TN NO. 92-25  
Supersedes  
TN NO. None  
*New Page*

STATE <u>Arkansas</u>	A
DATE APPROVAL <u>JUN 29 1992</u>	
DATE APPV'D <u>JUL 28 1992</u>	
DATE EFF <u>OCT 01 1990</u>	
HCFA 179 <u>92-25</u>	

Effective Date OCT 01 1990

HCFA ID: \_\_\_\_\_

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Arkansas

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Process for the Investigation of Allegations of Resident Neglect  
and Abuse and Misappropriation of Resident Property

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All written incident and accident reports shall be maintained on file in the facility for a period of five (5) years.

306.7 RESIDENT FOLLOW-UP

- The complete vital signs, including temperature, of any involved residents shall be included in the initial examination of the resident following the incident/accident.
- The condition of any residents involved in the incident shall be addressed on the nurses' notes each shift for a minimum of forty-eight hours.

306.8 OTHER REPORTING REQUIREMENTS

The facility Administrator is also required to make any other reports of incidents, accidents, suspected abuse/neglect, actual and suspected criminal conduct, etc. as required by state and federal laws and regulations.

306.9 QUALITY ASSESSMENT AND ASSURANCE COMMITTEE

Each facility shall maintain a Quality Assessment and Assurance Committee consisting of:

- The Director of Nursing Services;
- A physician designated by the facility; and
- At least three (3) other members of the facility's staff.

The Quality Assessment and Assurance Committee will:

- Meet at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and
- Develop and implement appropriate plans of action to

TN No. *92-25*  
Supersedes  
TN No. *92-25*  
*New Page*

STATE	Approval <i>Arkansas</i>
DATE REC'D	<i>JUN 29 1992</i>
DATE APPV'D	<i>JUL 28 1992</i>
DATE EFF	<i>OCT 01 1990</i>
HCFA 179	<i>4225</i>

Effective Date *OCT 01 1990*

A

HCFA ID: \_\_\_\_\_